

(processing) or better will be reduced 70 percent plus an additional 2 percent for each full percent in excess of 50 percent.

(iv) Production to count with 65 percent or more not grading U.S. No. 1 (processing) or better will be considered 100 percent cull production.

(v) The difference between the total production and the production to count as determined above will be considered cull production.

(vi) Thirty (30) percent of all cull production will be considered production to count, unless otherwise specified in the Special Provisions.

(vii) No reduction in production to count will be applied to any apple grading less than U.S. No. 1 (processing) due solely to size, shape, russetting, or color.

(viii) Any appraisal we make on the insured acreage will be considered production to count unless such appraised production is knocked to the ground by wind or hail or frozen on the tree to the extent that harvest is not practical.

(2) Fresh Fruit Option B—Notwithstanding section 11(c) and the definitions of “harvest” and “marketable” in section 1 of these provisions, the total production to count for a unit will include all harvested and appraised production. Harvested apple production that is damaged by hail to the extent that it does not grade 80 percent U.S. Fancy or better, in accordance with applicable USDA Standards for Grades of Apples, will be adjusted as follows:

(i) Production to count with 21 through 40 percent not grading U.S. Fancy or better will be reduced 2 percent for each full percent in excess of 20 percent.

(ii) Production to count with 41 through 50 percent not grading U.S. Fancy or better will be reduced 40 percent plus an additional 3 percent for each full percent in excess of 40 percent.

(iii) Production to count with 51 percent through 64 percent not grading U.S. Fancy or better will be reduced 70 percent plus an additional 2 percent for each full percent in excess of 50 percent.

(iv) Production to count with 65 percent or more not grading U.S. Fancy or better will be considered 100 percent cull production.

(v) The difference between the total production and the production to count as determined above will be considered cull production.

(vi) Apples that are knocked to the ground by wind or frozen to the extent they can be harvested but not marketed as U.S. Fancy grade apples will be considered 100 percent cull production.

(vii) Thirty (30) percent of all cull production will be considered production to count, unless otherwise specified in the Special Provisions.

(viii) No reduction in production to count will be applied to any apple grading less than U.S. Fancy due solely to size, shape, russetting, or color.

(ix) Any appraisal we make on the insured acreage will be considered production to count unless such appraised production is knocked to the ground by wind, hail, or frozen on the tree to the extent that harvest is not practical.

(g) Sunburn Option

(1) In addition to the causes of loss specified in section 9 of these provisions, excess sun is an insurable cause of loss.

(2) Notwithstanding the definitions of “harvest” and “marketable” in section 1 and 11(c)(1) and (2) of these provisions, the total production to be counted for a unit will include all harvested and appraised production. Harvested apple production that, due to excessive sun or in conjunction with hail damage, does not grade 80 percent U.S. Fancy or better, in accordance with applicable USDA Standards, will be adjusted as follows:

(i) Production to count with 21 through 40 percent not grading U.S. Fancy or better due solely to excessive sun or excessive sun along with hail damage, will be reduced 2 percent for each full percent in excess of 20 percent.

(ii) Production to count with 41 through 50 percent not grading U.S. Fancy or better due solely to excessive sun or excessive sun along with hail damage, will be reduced 40 percent plus an additional 3 percent for each full percent in excess of 40 percent.

(iii) Production to count with 51 through 64 percent not grading U.S. Fancy or better due solely to excessive sun or excessive sun along with hail damage, will be reduced 70 percent plus an additional 2 percent for each full percent in excess of 50 percent.

(iv) Production to count with 65 percent or more not grading U.S. Fancy or better due solely to excessive sun or excessive sun along with hail damage, will be considered 100 percent cull production.

(v) The difference between the total production and the production to count as determined above will be considered cull production.

(vi) Thirty (30) percent of all cull production will be considered as production to count unless otherwise specified in the Special Provisions.

[63 FR 17054, Apr. 8, 1998]

§ 457.159 Stonefruit crop insurance provisions.

The Stonefruit Crop Insurance Provisions for the 1999 and succeeding crop years are as follows:

FCIC Policies

Federal Crop Insurance Corporation, USDA

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United States Department of Agriculture

FEDERAL CROP INSURANCE CORPORATION

Reinsured Policies

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Stonefruit Crop Insurance Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

1. Definitions

Direct marketing. Sale of the insured crop directly to consumers without the intervention of an intermediary such as wholesaler, retailer, packer, processor, shipper, or buyer. Examples of direct marketing include selling through an on-farm or roadside stand, farmer's market, and permitting the general public to enter the field for the purpose of picking all or a portion of the crop.

Grading standards. The California Tree Fruit Agreement Marketing Order, or California State Department of Food and Agriculture Code of Regulations in effect for the appropriate crop, type, or varietal group.

Harvest. The picking of mature stonefruit either by hand or machine.

Interplanted. Acreage on which two or more crops are planted in any form of alternating or mixed pattern.

Lug. A container of fresh stonefruit of specified weight. Lugs of varying sizes will be converted to standard lug equivalents on the basis of the following average net pounds of packed fruit:

Crop	Pounds per lug
Fresh Apricots	24
Fresh Nectarines	25
Fresh Freestone Peaches	22

Weight for Processing Apricots, Processing Cling Peaches, and Processing Freestone Peaches are specified in tons.

Marketable. Stonefruit production acceptable for processing or other human consumption, even if it fails to meet the State Department of Food and Agriculture minimum grading standard.

Processor. A business enterprise regularly engaged in processing fruit for human consumption that possesses all licenses and permits for processing fruit required by the state in which it operates, and that possesses facilities, or has contractual access to such facilities, with enough equipment to accept and process contracted fruit within a reasonable amount of time after harvest.

Stonefruit. Any of the following crops grown for fresh market or processing:

- (a) Fresh Apricots,
- (b) Fresh Freestone Peaches,
- (c) Fresh Nectarines,
- (d) Processing Apricots,
- (e) Processing Cling Peaches, and
- (f) Processing Freestone Peaches.

Ton. Two thousand (2,000) pounds avoirdupois.

Type. Class of a stonefruit crop with similar characteristics that are grouped for insurance purposes.

Varietal group. A subclass of type.

2. Unit Division

Notwithstanding the provisions of section 34 of the Basic Provisions that allow optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices, optional units will only be allowed as stated herein or by written agreement.

(a) **Optional Units on Acreage Located on Non-contiguous Land:** Optional units may be established if each optional unit is located on non-contiguous land.

(b) **Optional Units by Type or Varietal Group:** Optional units may be established by type or varietal group if allowed by the Special Provisions.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

In addition to the requirements of section 3 of the Basic Provisions:

(a) You may select only one price election and coverage level for each crop grown in the county and listed in the Special Provisions that is insured under this policy. If separate price elections are available by type or varietal group of a crop, the price elections you choose for each type or varietal group must have the same percentage relationship to the maximum price offered by us for each type or varietal group. For example, if you choose 100 percent of the maximum price election for one type of cling peaches, you must choose 100 percent of the maximum price election for all other types of cling peaches.

(b) You must report, by the production reporting date designated in section 3 of the Basic Provisions, by type or varietal group, if applicable, for each stonefruit crop:

(1) Any damage, removal of trees, change in practices, or any other circumstance that may reduce the expected yield below the yield upon which the insurance guarantee is based, and the number of affected acres;

(2) The number of bearing trees on insurable and uninsurable acreage;

(3) The age of the trees and the planting pattern; and

(4) For the first year of insurance for acreage interplanted with another perennial

crop, and any time the planting pattern of such acreage is changed:

- (i) The age of the interplanted crop, and type or varietal group if applicable;
- (ii) The planting pattern; and
- (iii) Any other information that we request in order to establish your approved yield.

We will reduce the yield used to establish your production guarantee as necessary, based on our estimate of the effect of interplanting a perennial crop, removal of trees, damage, change in practice, and any other circumstance that could affect the yield potential of the insured crop. If you fail to notify us of any circumstance that may reduce your yields from previous levels, we will reduce your production guarantee as necessary at any time we become aware of the circumstance.

4. Contract Changes

In accordance with section 4 of the Basic Provisions, the contract change date is October 31 preceding the cancellation date.

5. Cancellation and Termination Dates

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are January 31.

6. Insured Crop

In accordance with section 8 of the Basic Provisions, the crop insured will be all of each stonefruit crop you elect to insure, that is grown in the county, and for which premium rates are provided in the actuarial documents:

- (a) In which you have a share;
- (b) That is grown on trees that:
 - (1) Were commercially available when the trees were set out;
 - (2) Is adapted to the area; and
 - (3) Is grown on a root stock that is adapted to the area;
- (c) That is irrigated;
- (d) That have produced at least 200 lugs of fresh market production per acre, or at least 2.2 tons per acre for processing crops, in at least 1 of the 3 most recent actual production history crop years, unless we inspect such acreage and give our approval in writing;
- (e) That are regulated by the California Tree Fruit Agreement or related crop advisory board for the state (for applicable types);
- (f) That are grown in an orchard that, if inspected, is considered acceptable by us; and
- (g) That have reached at least the fifth growing season after set out. However, we may agree in writing to insure acreage that has not reached this age if it meets the requirements of subsection (d) of this section.

7. Insurable Acreage

In lieu of the provisions of section 9 of the Basic Provisions that prohibit insurance attaching to a crop planted with another crop, stonefruit interplanted with another perennial crop is insurable unless we inspect the acreage and determine that it does not meet the requirements for insurability contained in your policy.

8. Insurance Period

(a) In accordance with the provisions of section 11 of the Basic Provisions:

- (1) Coverage begins on February 1 of each crop year, except that for the year of application, if your application is received after January 22 but prior to February 1, insurance will attach on the 10th day after your properly completed application is received in our local office unless we inspect the acreage and determine that it does not meet insurability requirements. You must provide any information that we require for the crop or to determine the condition of the orchard.
- (2) The calendar date for the end of the insurance period for each crop year is:
 - (i) July 31 for all apricots; and
 - (ii) September 30 for all nectarines and peaches.

(b) In addition to the provisions of section 11 of the Basic Provisions:

- (1) If you acquire an insurable share in any insurable acreage after coverage begins but on or before the acreage reporting date for the crop year, and after an inspection we consider the acreage acceptable, insurance will be considered to have attached to such acreage on the calendar date of acquisition.
- (2) If you lose or relinquish your insurable share on any insurable acreage of stonefruit on or before the acreage reporting date for the crop year and if the acreage was insured by you the previous crop year, insurance will not be considered to have attached to, and no premium or indemnity will be due for such acreage for that crop year unless:
 - (i) A transfer of coverage and right to an indemnity, or a similar form approved by us, is completed by all affected parties;
 - (ii) We are notified by you or the transferee in writing of such transfer on or before the acreage reporting date; and
 - (iii) The transferee is eligible for crop insurance.

9. Causes of Loss

(a) In accordance with the provisions of section 12 of the Basic Provisions, insurance is provided only against the following causes of loss that occur during the insurance period:

- (1) Adverse weather conditions;
- (2) Fire, unless weeds and other forms of undergrowth have not been controlled or pruning debris has not been removed from the orchard;

- (3) Wildlife;
- (4) Earthquake;
- (5) Volcanic eruption; or
- (6) Failure of the irrigation water supply, if due to a cause of loss contained in sections 9(a)(1) through (5) that occurs during the insurance period.
- (b) In addition to the causes of loss excluded by section 12 of the Basic Provisions, we will not insure against damage or loss of production due to:
 - (1) Disease or insect infestation, unless adverse weather:
 - (i) Prevents the proper application of control measures or causes properly applied control measures to be ineffective; or
 - (ii) Causes disease or insect infestation for which no effective control mechanism is available;
 - (2) Split pits regardless of cause; or
 - (3) Inability to market the insured crop for any reason other than actual physical damage from an insurable cause of loss specified in this section. For example, we will not pay you an indemnity if you are unable to market due to quarantine, boycott, or refusal of any person to accept production.

10. Duties in the Event of Damage or Loss

In addition to the requirements of section 14 of the Basic Provisions, the following will apply:

- (a) You must notify us within 3 days after the date harvest should have started if the insured crop will not be harvested.
- (b) You must notify us at least 15 days before any production from any unit will be sold by direct marketing. We will conduct an appraisal that will be used to determine your production to count for production that is sold by direct marketing. If damage occurs after this appraisal, we will conduct an additional appraisal. These appraisals, and any acceptable records provided by you, will be used to determine your production to count. Failure to give timely notice that production will be sold by direct marketing will result in an appraised amount of production to count of not less than the production guarantee per acre if such failure results in our inability to make the required appraisal.
- (c) In addition to section 14 of the Basic Provisions, if you intend to claim an indemnity on any unit, you must give us notice at least 15 days prior to the beginning of harvest. You must not destroy the damaged crop until after we have given you written consent to do so. If you fail to notify us and such failure results in our inability to inspect the damaged production, we may consider all such production to be undamaged and include it as production to count.

11. Settlement of Claim

- (a) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable production records:
 - (1) For any optional units, we will combine all optional units for which such production records were not provided; or
 - (2) For any basic units, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for the units.
- (b) In the event of loss or damage covered by this policy, we will settle your claim by:
 - (1) Multiplying the insured acreage for each type or varietal group by its respective production guarantee;
 - (2) Multiplying each result of section 11(b)(1) by the respective price election for the type or varietal group;
 - (3) Totaling the results of section 11(b)(2). (If there is only one type or varietal group, the result of (3) will be the same as the result of (2));
 - (4) Multiplying the total production to count (see section 11(c)), for each type or varietal group, by the respective price election;
 - (5) Totaling the results of section 11(b)(4);
 - (6) Subtracting the result of section 11(b)(5) from the result of section 11(b)(2). (If there is only one type or varietal group, the result of (6) will be the same as the result of (5)); and
 - (7) Multiplying the result of section 11(b)(6) by your share.

For example:

You have a 100 percent share in 50 acres of varietal group A stonefruit in the unit, with a guarantee of 500 lugs per acre and a price election of \$6.00 per lug. You are only able to harvest 5,000 lugs. Your indemnity would be calculated as follows:

- (1) 50.0 acres × 500 lugs = 25,000 lugs guarantee;
- (2) and (3) 25,000 lugs × \$6.00 price election = \$150,000.00 value of guarantee;
- (4) 5,000 lugs × \$6.00 price election = \$30,000.00 value of production to count;
- (5) and (6) \$150,000.00—\$30,000.00 = \$120,000.00 loss; and
- (7) \$120,000.00 × 100 percent = \$120,000 indemnity payment.

You also have a 100 percent share in 50 acres of varietal group B stonefruit in the unit, with a guarantee of 300 lugs per acre and a price election of \$3.00 per lug. You are only able to harvest 3,000 lugs. Your indemnity would be calculated as follows:

- (1) 50.0 acres × 500 lugs varietal group A = 25,000 lugs guarantee; and 50.0 acres × 300 lugs varietal group B = 15,000 lugs guarantee;
- (2) 25,000 lugs × \$ 6.00 price election = \$150,000.00 value of guarantee for varietal group A; and 15,000 lugs × \$3.00 price election = \$45,000.00 value of guarantee for varietal group B;

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(3) $\$150,00.00 + \$45,000.00 = \$195,000.00$ total value of guarantee;

(4) $5,000 \text{ lugs varietal group A} \times \$6.00 \text{ price election} = \$30,000.00$ value of production to count; and $3,000 \text{ lugs varietal group B} \times \$3.00 \text{ price election} = \$9,000.00$ value of production to count; and

(5) $\$30,000.00 + \$9,000.00 = \$39,000.00$ total value of production to count;

(6) $\$195,000.00 - \$39,000.00 = \$156,000.00$ loss

(7) $\$156,000.00 \text{ loss} \times 1.000 = \$156,000$ indemnity payment.

(c) The total production to count (in lugs or tons) from all insurable acres on a unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee per acre for acreage:

(A) That is abandoned;

(B) That is sold by direct marketing if you fail to meet the requirements contained in section 10;

(C) That is damaged solely by uninsured causes; or

(D) For which you fail to provide production records that are acceptable to us;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production that would be marketable if harvested; and

(iv) Potential production on insured acreage that you intend to abandon or no longer care for, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end. If you do not agree with our appraisal, we may defer the claim only if you agree to continue to care for the insured crop. We will then make another appraisal when you notify us if any further damage or that harvest is general in the area unless you harvested the crop. If you harvest the crop we will use the harvested production. If you do not continue to care for the crop, our appraisal made prior to deferring the claim will be used to determine the production to count; and

(2) All harvested production from the insurable acreage.

(3) The quantity of harvested production will be reduced if the following conditions apply:

(i) The value of the damaged production is less than 75 percent of the marketable value of undamaged production due to an insured cause of loss; and

(ii) For stonefruit insured as fresh fruit only, the stonefruit either is packed and sold as fresh fruit and meets only the utility grade requirements of the applicable grading standards, or fails to meet the applicable grading standards but is or could be sold for any use other than fresh packed stonefruit.

(4) Harvested production of stonefruit that is eligible for quality adjustment as specified in section 11(c)(3) will be reduced as follows:

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(i) When packed and sold as fresh fruit or when insured as a processing crop, by dividing the marketable value per lug or ton by the highest price election (for the applicable coverage level) and multiplying the result (not to exceed 1.00) by the quantity of such production; or

(ii) For all other fresh stonefruit, multiplying the number of tons that could be marketed by the value per ton (for the applicable coverage level) and dividing that result by the highest price election available for that type.

12. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions (§457.8) are not applicable.

[63 FR 29935, June 2, 1998]

§ 457.160 Processing tomato crop insurance provisions.

The Processing Tomato Crop Insurance Provisions for the 1998 and succeeding crop years are as follows:

FCIC Policies

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Reinsured Policies

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Processing Tomato Crop Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

1. Definitions

Acre. 43,560 square feet of land on which row widths do not exceed 6 feet, or the land on which at least 7,260 linear feet rows are planted if row widths exceed 6 feet.

Bypassed acreage. Land on which production is ready for harvest but the processor elects not to accept such production so it is not harvested.

First fruit set. The reproductive stage of the plant at which 30 percent of the plants have produced a fruit that has reached a minimum of one inch in diameter.

Good farming practices. The cultural practices generally in use in the county for the crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee and are those required by the tomato processor contract with the processing company, and are those recognized by the Cooperative State